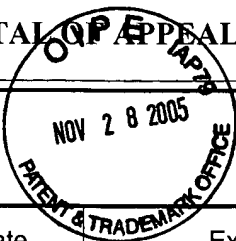


# TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.  
2810

In Re Application Of: PEEK



Application No. 10/762,413	Filing Date 01/22/2004	Examiner LEGESSE, N.	Customer No. 278	Group Art Unit 3711	Confirmation No.
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Invention: GOLF TRAINING APPARATUS

## COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:  
10/10/2005

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$250.00

- ☐ A check in the amount of the fee is enclosed.
- ☒ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 194675
- ☐ Payment by credit card. Form PTO-2038 is attached.

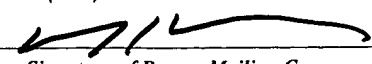
**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

  
Signature

Dated: 11/21/2005

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11/21/05  
(Date)

  
Signature of Person Mailing Correspondence

MICHAEL J. STANLEY

Typed or Printed Name of Person Mailing Correspondence

CC:

**UNITED STATES PATENT AND TRADEMARK OFFICE**

Examiner: Legesse, N.

Art Unit: 3711

In re:

Applicant: PEEK, I.

Serial No.: 10/762,413

Filed: January 22, 2004

**BRIEF ON APPEAL**

November 21, 2005

Commissioner for Patents  
P. O. Box 1450  
Alexandria, Virginia

Sir:

This is an Appeal from the final rejection of claim 11 by the  
Primary Examiner.

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11/29/2005 WARDELRI 00000073 194675 10762413  
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### Real Party of Interest

The real party of interest is Mr. Yan Peek residing at Roemerstrasse 22/1, 72488 Sigmaringen, Germany.

### Related Appeals and Interferences

There are no other prior and pending appeals, interferences, or judicial proceedings known to appellant, the appellant's legal representative or assignee which may be related to, directly affect, or be directly affected by, or having a bearing on the Board's decision in the pending appeal.

### Status of Claims

The present application currently contains only claim 11. This claim was rejected by the Examiner.

### Status of Amendments

After the Final Action of April 12, 2005 appellant filed a Request for Reconsideration of June 9, 2005. In the Advisory Action of August 1, 2005, the Examiner indicated that the Request for Reconsideration was entered, but claim 11 was rejected over the patent to Elson.

### Summary of Claimed Subject Matter

The present invention deals with a golf training apparatus for practicing straight hits.

In accordance with the present invention, the golf training apparatus has an upright rack which is identified with reference numeral 11. The upright rack 11 is composed of a rigid material.

The golf training apparatus further has a rod which is identified with reference numeral 16 and provided on the upright rack 11. The rod 16 is aligned substantially horizontally and parallel to a desired hitting direction. Also, the rod 16 is arranged at a distance to the upright rack 11, such that a golf club is swingable through underneath the rod 16.

In accordance with an important feature of the present invention, the upright rack 11 is composed of rigid material and is therefore rigid, while in contract, the rod 16 is inflatable such that touching the inflatable rod 16 by a golfer is harmless and not accompanied by a risk of injuries.

These features are defined in claim 11. These features are described for example in paragraphs 1 and 2 on page 7 and in the paragraph bridging pages 7 and 8, and shown in Figures 1 and 2.

### Grounds for Rejection to Be Reviewed on Appeal

Claim 11 was rejected over the patent to Elson. This the only ground for rejection to be reviewed on Appeal.

### Argument

It is respectfully submitted that claim 11 clearly and patentably distinguishes from the prior art applied by the Examiner against the claims, namely from the patent to Elson.

Turning now to the patent to Elson, it is respectfully submitted that the invention disclosed in the patent to Elson deals with a valve for inflating balloons, and therefore it belongs to a non-analogous art. It is believed to be advisable to cite some decisions related to this issue. In re Clay 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992) it was stated that:

“Two criteria have evolved for determining whether prior art is analogous: 1. Whether the art is from the same field of endeavor and 2. If the reference is not within the field of the inventor’s endeavor, whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved. A reference is reasonably pertinent if because of the matter with which it deals logically it would have commended itself to the inventor’s attention in considering his problem.”

It is believed to be clear that, as for the first criterion, the patent to Elson is not from the same field of endeavor as the golf training apparatus of the present invention.

As specifically stated in the patent to Elson, the Elson invention has an objective to have an improved inflation mechanism for inflatable devices, since in the prior art in toy balloons and similar inflatable devices the pressure differential between the interior and exterior of the balloon is very small, so that the valve closure pressure is correspondingly small with the consequence that high leakage is experienced with these valves.

The problem of the present invention is to provide a golf training apparatus with an upright rack, and a horizontal rod that can not harm and injure a golfer when the golfer hits the rod. Thus, if the second criteria is applied, it will become clear that the reference is not reasonably pertinent to the particular problem with which the inventor of the present invention is involved.

It is therefore believed that for the above presented reasons, the rejection of claim 11 over the patent to Elson, which represents the non-analogous art, should be considered as not tenable.

Furthermore, claim 1 specifically defines that the golf training apparatus of the invention has an upright rack made of rigid material, and a rod provided on the upright rack and arranged so that a golf club is swingable through underneath the rod. In the patent to Elson the tank which contains a pressurized medium can not be considered to be an upright rack. First of all the tank is not a rack, and secondly the tank disclosed in the patent to Elson is not an upright element. An upright element is an element which has a vertical dimension greater than a horizontal dimension. From the consideration of Figure 1 of the patent to Elson, it can be seen that the tank 33 disclosed in the patent to Elson has a horizontal dimension which is greater than its vertical direction. Thus, the tank 33 in the patent to Elson is not an upright rack, but instead is a horizontal tank.

While in the applicant's opinion the device disclosed in the patent to Elson can not be even considered for use as a golf training apparatus, for the sake of argument if a person of ordinary skill in the art takes the device disclosed in the patent to Elson and tries to use it, he will not be able to swing a golf club underneath a horizontal extension of the tank, since the tank 33 is not an upright element but a horizontal element which is very low, and the horizontal extension of the tank attached to it at its right side would be located very low and would not allow swinging a golf club underneath the horizontal extension of the tank.

Turning now to the issue of the inflatable rod which is formed so that touching of the inflatable rod by a golfer is harmless and not accompanied by a risk of injuries. It is respectfully submitted that the patent to Elson does not disclose an element which can be compared with the inflatable rod. The balloon 10 shown in the drawings is not a part of the device disclosed in the patent to Elson, but instead it is an item which is separate from the valve of the invention disclosed in the patent to Elson, and it is a completely separate consumer item (environment to the invention) which is just inflatable by the pressure medium supplied from the tank 33. The element which is provided on the tank 33 and aligned substantially horizontally is the control valve mechanism 34 with the nozzle 36 and with the head 40. However, these elements are completely rigid and can not be compared with an inflatable rod of the applicant's invention. While in the patent the nozzle 36 is referred to as an "inflatable" nozzle, this reference is wrong, since the nozzle 36 is for inflation of balloons but is not inflatable itself. If for some unknown and absolutely improbable reasons, the valve disclosed in the patent to Elson were used as a golf training apparatus, a golfer as a result of touching the elements 33, 36, 40 would harm himself and most probably injure himself, which completely contradicts the present invention and the language specifically provided in claim 11.



Furthermore, it is respectfully submitted that if for the sake of argument the balloon 10 in the patent to Elson were compared with an inflatable rod of the golf training apparatus of the present invention, the balloon would not operate at all for golf training purposes. As described in detail in the Elson patent, the invention disclosed in this reference deals with a valve for inflating balloons, in particular toy balloons and similar inflatable articles, as explained in line 27, column 1 of the patent. It is well known that such balloons are sensitive elements and are easily ruptured and burst. If such a balloon is used for a golf training apparatus, then after a first strike of the balloon by a golfer, the balloon would immediately burst and the "apparatus" would become unusable.

It is believed that the above presented arguments also clearly show that the golf training apparatus for practicing straight hits in accordance with the present invention can not be considered as obvious from the patent to Elson.

In view of the above presented arguments, it is believed to be clear that claim 11 should be considered as patentably distinguishing over the patent to Elson and should be allowed. Therefore, reconsideration of the present application, reversal of the Examiner's rejection of claim 11, and its allowance is most respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. Striker', with a long horizontal flourish extending to the right.

Michael J. Striker  
Attorney for Applicants  
Reg. No. 27233

## APPENDIX

11. A golf training apparatus for practicing straight hits, comprising:

an upright rack made of a rigid material; and  
a rod provided on said upright rack and aligned substantially horizontally and parallel to a desired hitting direction, said rod being arranged at a distance to said upright rack such that a golf club is swingable through underneath said rod, and while said rack being rigid said rod being inflatable such that touching said inflatable rod by a golfer is harmless and not accompanied by a risk of injuries.